

1 David S. Markun (SBN 108067)  
2 dmarkun@mzclaw.com  
3 Jeffrey K. Compton (SBN 142969)  
4 jcompton@mzclaw.com  
5 Daria Dub Carlson (SBN 150628)  
6 dcarlson@mzclaw.com  
7 MARKUN ZUSMAN & COMPTON LLP  
8 17383 Sunset Boulevard, Suite A380  
9 Pacific Palisades, California 90272  
10 Telephone: (310) 454-5900  
11 Facsimile: (310) 454-5970  
12 *Additional Counsel Listed on Next Page*

Attorneys for Defendant  
West Coast Undercover, Inc. dba 4Play, Corp.

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 THE CALIFORNIA COALITION OF  
14 UNDRESSED PERFORMERS; 4  
15 EXOTIC DANCERS; and ALL  
16 SIMILARLY SITUATED  
INDIVIDUALS

17 Plaintiffs,

18 v.

19 SPEARMINT RHINO; BARE  
20 ELEGANCE; CENTURY LOUNGE;  
21 CRAZY GIRLS; DÉJÀ VU  
22 SHOWGIRLS; FANTASY ISLAND; 4  
23 PLAY; JET STIP; PLAYPEN; RIO;  
24 ROUGE; SAM'S HOF BRAU;  
25 SCORES; SEVENTH VEIL; SILVER  
26 REIN; STAR STRIP; STAR STRIP  
27 TOO; STARZ and the WILD GOOSE  
28

Defendants

Case No. CV08-04038 ABC(SSx)  
*Assigned For All Purposes To:*  
*Hon. Audrey B. Collins*

**NOTICE OF MOTION AND  
MOTION OF DEFENDANT 4PLAY  
TO DISMISS PURSUANT TO FED.  
R. CIV. P. 12(b)(6) BASED ON  
PLAINTIFFS' LACK OF  
STANDING; AND PURSUANT TO  
FED. R. CIV. P. 17(a) BECAUSE  
PLAINTIFFS ARE NOT REAL  
PARTIES IN INTEREST WITH  
RESPECT TO ANY CLAIMS  
AGAINST DEFENDANT 4 PLAY**

**CLASS ACTION**

Date: December 8, 2008

Time: 10:00 a.m.

Ctrm: 680

Action Filed: June 19, 2008

Trial Date: None

1 EDITH A. THOMAS, ESQ. SBN: 220820  
2 214 North Ridge Drive, Suite B  
3 Fallbrook, California 92028  
4 Telephone: (888) 349-3940  
5 Facsimile: (760) 728-9518  
6 edithomas1@aol.com

7 ///

8 ///

9 ///


1 PLEASE TAKE NOTICE that on December 8, 2008 at 10:00 a.m. or as soon  
2 thereafter as the matter may be heard in Courtroom 680 of the United States District  
3 Court for the Central District of California, located at 255 East Temple Street, Los  
4 Angeles, California, 90012, defendant West Coast Undercover, Inc. dba 4Play,  
5 Corp. ("4Play") will and hereby does move the Court for an order dismissing  
6 plaintiffs' complaint herein as to 4Play. This motion is made on the grounds that  
7 plaintiffs have no standing to sue 4Play and plaintiffs are not the real parties in  
8 interest with respect to any claims against 4Play.

9 This Motion is based on this Notice and Motion, the Memorandum of Points  
10 and Authorities in support thereof, the complaint and papers on file in this action, and  
11 on the oral and written evidence presented at the hearing.

12 This Motion is made following the conference with counsel pursuant to Local  
13 Rule 7-3, which took place on November 4, 2008.

14  
15 Dated: November 5, 2008

MARKUN ZUSMAN & COMPTON, LLP  
LAW OFFICE OF EDITH THOMAS

16  
17  
18 By:   
19 Daria Dub Carlson  
Edith A. Thomas

20  
21 Attorneys for Defendant West Coast  
Undercover, Inc. dba 4Play, Corp.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 SUMMARY OF ARGUMENT

4 Plaintiffs consist of a purported coalition of exotic dancers as well as 4  
 5 unnamed exotic dancers. Plaintiffs sued various nightclubs alleging, among other  
 6 things, that the nightclubs do not pay the dancers wages, charge the dancers stage fees  
 7 for working in the clubs, force dancers to tip other club employees, force dancers to  
 8 give 50% of their tips back to the club and improperly characterize the dancers as  
 9 independent contractors as opposed to employees. None of the 4 unnamed exotic  
 10 dancers alleges that she ever worked at 4Play, and the Complaint does not allege that  
 11 any member of the purported coalition ever worked at 4Play. As such, as set forth  
 12 more fully below, the Complaint should be dismissed as to defendant 4Play on the  
 13 grounds that plaintiffs are not real parties in interest with respect to any claims  
 14 against 4Play and plaintiffs have no standing to sue 4Play.

15 II.

16 STATEMENT OF FACTS

17 On or about June 19, 2008, plaintiffs filed a Complaint for Damages,  
 18 Injunctive, Declaratory Relief and Attorney's Fees Pursuant to: FLSA, 29 U.S.C. §§  
 19 201-209; Cal. Labor Code §§ 1194, 98.3; Cal. Labor Code § 351; Cal. Bus & Prof.  
 20 Code §§ 17200, et seq. (the "Complaint"). The Complaint purports to be filed by  
 21 "Plaintiff California Coalition of Undressed Performers ("C-CUP") [which] is an  
 22 association of female exotic dancers who work at a number of Defendant nightclubs. .  
 23 . ." (Complaint, ¶ 3). Also listed as plaintiffs are 4 unnamed Exotic Dancers who  
 24 worked at some but not all of the nightclubs named as defendants. In paragraphs 5  
 25 through 8, the Complaint identifies the clubs at which each of the unnamed 4 Exotic  
 26 Dancers worked during the past three years. None of the 4 Exotic Dancers list 4Play  
 27 as a nightclub at which she worked. In addition, there is no allegation that any of the  
 28 exotic dancers who are purportedly members of C-CUP ever worked at 4Play.

1 The first three causes of action name as defendants only the nightclubs at  
 2 which one of the 4 Exotic Dancers indicate that they worked, i.e, Spearmint Rhino,  
 3 Déjà vu Showgirls, Rio, Rouge, Silver Rein, Scores and the Wild Goose. Defendant  
 4 4Play is not named in these causes of action. Defendant 4Play is only named as a  
 5 defendant in the Fourth Cause of Action for violation of California Bus. & Prof. Code  
 6 §§ 17200, et seq. (Complaint, ¶¶ 50-56).

### 7 III.

#### 8 PLAINTIFFS HAVE NO STANDING TO SUE DEFENDANT 4PLAY 9 AND ARE NOT REAL PARTIES IN INTEREST WITH RESPECT TO 10 ANY CLAIMS AGAINST DEFENDANT 4 PLAY

11 The U.S. Constitution limits federal judicial power to designated cases and  
 12 controversies. (U.S. Const., Art. III, § 2). To establish a case or controversy under  
 13 Article III of the U. S. Constitution, a plaintiff must show the following as an  
 14 “irreducible minimum”: (1) an injury in fact which is concrete and not conjectural;  
 15 (2) a causal connection between the injury and defendant’s conduct or omissions; and  
 16 (3) a likelihood that the injury will be redressed by a favorable decision.” Lujan v.  
 17 Defenders of Wildlife (1992) 504 U.S. 555, 560-561; United Food & Commercial  
 18 Workers Union, Local 751 v. Brown Group, Inc. (1996) 517 U.S. 544, 550. In  
 19 addition, the claim must be for injury to plaintiff’s own legal rights and interests,  
 20 rather than the legal rights or interests of third parties. See, Elk Grove Unified  
 21 School Dist. v. Newdow (2004) 542 U.S. 1, 14.

22 Further, Fed. R. Civ. P. 17(a) provides, in pertinent part, that: “An action must  
 23 be prosecuted in the name of the real party in interest. . . .” The “real party in  
 24 interest” is the person who has the right to sue under the substantive law. In general  
 25 it is the person holding title to the claim, as opposed to others who may benefit by the  
 26 litigation or be interested in the claim. U-Haul Int’l, Inc. v. Jartran, Inc. (9<sup>th</sup> Cir.  
 27 1986) 793 F.2d 1034, 1038; United Healthcare Corp. v. American Trade Ins. Co.,  
 28 Ltd. (8<sup>th</sup> Cir. 1996) 88 F.3d 563, 568-569; Farrell Const. Co. v. Jefferson Parish,

1 Louisiana (5<sup>th</sup> Cir. 1990) 896 F.32d 136, 140. The plaintiff “must allege facts  
 2 sufficient to reveal that he suffered an injury, that the injury was caused by the  
 3 defendant’s illegal conduct, and that his injury could be redressed by a favorable  
 4 outcome in the lawsuit.” Steckler v. Star Enterprise (11<sup>th</sup> Cir. 1997) 124 F.3d 1399,  
 5 1406.

6 As stated above, none of the unnamed 4 Exotic Dancers alleges that she ever  
 7 worked at 4Play. In addition, the Complaint does not allege that any member of C-  
 8 CUP ever worked at 4Play. As such, plaintiffs cannot establish an injury in fact, a  
 9 causal connection or a likelihood that any injury will be redressed in an action against  
 10 4Play.

11 These standing requirements are not altered by the fact that this case is a  
 12 putative class action. It is not enough for a class representative to show injury to  
 13 class members whom they purport to represent. A class plaintiff must show actual  
 14 injury to himself or herself. (See, Lewis v. Casey (1996) 518 U.S. 343, 349: “It is the  
 15 role of courts to provide relief to claimants, in individual or class actions, who have  
 16 suffered, or will imminently suffer, actual harm.”).

17 In addition, Business and Professions Code §§ 17204 provides, in pertinent  
 18 part, that an action for relief may be prosecuted by a private person “who has suffered  
 19 injury in fact and has lost money or property as a result of the unfair competition.”  
 20 Here, no plaintiff has alleged any injury in fact caused by 4Play, nor has any plaintiff  
 21 alleged that she has lost any money or property as a result of any action by 4Play.

22 Therefore, the Complaint should be dismissed as to defendant 4Play.

23 ///

24 ///

25 ///


IV.

CONCLUSION

For all the foregoing reasons, defendant 4Play respectfully requests that this motion be granted in its entirety.

Dated: November 5, 2008

MARKUN ZUSMAN & COMPTON, LLP  
LAW OFFICE OF EDITH THOMAS

By:   
Daria Dub Carlson  
Edith A. Thomas

Attorneys for Defendant West Coast  
Undercover, Inc. dba 4Play, Inc.